IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5948 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SHREE KRISHNA CAST IRON AND BRASS WORKS & 1 - Petitioner(s)
Versus
GUJARAT ELECTRICITY BOARD & 2 - Respondent(s)

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Appearance :
MR PARESH M DAVE for Petitioner(s) : 1 - 2.
MR AD OZA for Respondent(s) : 1, 3,
None for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH
Date : 13/02/2006

ORAL JUDGMENT

By way of this petition under Article 226 of the Constitution of India, the petitioners have prayed for an appropriate writ, direction or order quashing and setting aside decision of the respondent

No.2 communicated vide letter dated 17.6.1999 rejecting the representation submitted by the petitioner with regard to delay payment charge. The petitioners have also prayed for an appropriate order directing the respondent No.3 to charge delay payment charge at the rate of 6% p.a. for the period from 16.8.1993 to 30th August 1996 during which stay order of the Consumer Disputes Redressal Commission was in operation. The petitioners have also further prayed to quash and set aside the letter dated 26.7.1993 along with supplementary bills sent therewith and also the notice dated 10th August 1993.

2. The petitioner company is a consumer of respondent Gujarat Electricity Board having HT connection. It appears that according to the respondent GEB there was a mistake in calculation and therefore a supplementary bill came to be issued amounting to Rs. 11,17,310 for the period between August 1991-June 1993. The petitioners challenged the same before the Consumer Disputes Redressal Commission at Ahmedabad [hereinafter referred to as

"the Commission") by way of a complaint being Complaint No. 259 of 1993 and the Commission granted stay order in favour of the petitioners on condition of making deposit of 55% of the disputed amount and furnishing Bank guarantee for the remaining 45% of the disputed amount. It appears that the petitioner Company paid an amount of Rs. 6,13,310 and furnished a Bank guarantee of Rs. 5,04,000. Thereafter the Commission passed a final order in the above complaint and thereby dismissed the same. The petitioners thereafter preferred Special Civil Application No. 10338 of 1996 before this Court challenging the action of the respondent Board in demanding additional electricity charges with interest. The learned Single Judge of this Court issued Notice at the initial stage, however, after hearing the parties passed an order directing the petitioner Company to deposit balance 45% amount of Rs. 5,04,000 of which the Bank Guarantee was given by the petitioner Company and the same was deposited by the petitioner. The aforesaid Special Civil Application came up for hearing before the learned

Single Judge of this Court and the same came to be disposed of by the learned Single Judge [Coram: Mr. A.L. Dave, J.] relegating the petitioner Company to make a representation before the respondent No.2 with regard to delay payment charges and/or interest on delay payment charges. It appears that thereafter the petitioner submitted a representation, pursuant to the order passed by this Court in Special Civil Application No. 10338 of 1996, which came to be rejected by the impugned communication dated 17.6.1999. Being aggrieved and dissatisfied with the same, the petitioner has preferred the present Special Civil Application.

3. At the outset, it is required to be noted that, pursuant to the order dated 20th April 1999 passed by the learned Single Judge of this Court in Special Civil Application No. 10338 of 1996, the only dispute which was required to be considered by the respondent GEB was with regard to liability of delay payment charges, and once the main Special Civil Application came to be withdrawn it is now not open

for the petitioner to challenge the supplementary bill. Therefore, the only question which requires

consideration is about the liability of the petitioner of delay payment charges.

4. The only submission made on behalf of the petitioners is that, as the petitioner was prosecuting the remedy before the Commission bona fide and interim relief was granted by the Commission, the petitioners should not be saddled with the liability to pay delay payment charges and/or interest more particularly for the period between 16.8.1993 and 30th August 1996 during which the stay order of the Commission was in operation. It is submitted that the petitioners have acted and/or deposited the amount as per the order passed by the Commission and thereafter by this Court. It is also submitted by the learned advocate appearing for the petitioners that at the time when this Court disposed of the aforesaid Special Civil Application relegating the petitioners to submit a representation

it was agreed and/or there was a broad consensus that interest will be charged at 6% only and therefore it is requested to allow the present Special Civil Application and quash and set aside the action of the respondent in passing the order with regard to delay payment charges.

5. The present petition is opposed by Shri Dipak Dave, learned advocate appearing on behalf of the respondent Board. He has submitted that once the Special Civil Application came to be withdrawn it is not open for the petitioner now to raise the same contention. It is further submitted that so far as the liability of delay payment charges is concerned, it is a statutory liability on account of non-payment of dues of electricity charges and merely because the stay order was granted by the Commission which was subsequently vacated, the GEB should not be made to suffer and/or the GEB may not be restrained from recovering the statutory dues. It is further submitted that there was no such consensus between the parties as alleged with regard to recovery of

delay payment charges at 6%. It is submitted that as per the Conditions of Supply of Electricity, so far as HT connection is concerned, delay payment charge is recovered at 30% after 10 days of the bill. Relying upon the judgment of the Hon'ble Supreme Court in the case of ***M/s. Shree Chamundi Mopeds Ltd. Vs. Church of South India Trust Association, Madras,*** reported in *AIR 1992 S.C. Page 1439,* it is submitted that so far as the interim order is concerned it is passed during the pendency of the proceedings and the moment the stay order is vacated the position which was prevailing prior to grant of stay order will be restored and all the consequences of vacating the interim stay order would follow and therefore it is requested to dismiss the present Special Civil Application.

6. Heard the learned advocate appearing for the parties. It is not in dispute that the supplementary bill was issued in the month of August 1993 for an amount of Rs. 11,17,310 which was challenged by the petitioner before the Commission and the stay order

was granted by the Commission on condition that the petitioner should deposit 55% of the disputed amount in cash and 45% by Bank Guarantee and the entire amount came to be paid subsequently pursuant to the order passed by this Court. The stay order granted by the Commission came to be vacated in the year 1996 and therefore the Electricity Board insisted for payment of delay payment charges from the date of issuance of the bill till the actual amount is paid. It is the contention on behalf of the petitioners that due to stay order the amount was not deposited and the petitioner was prosecuting bona fide before the appropriate forum more particularly before the Commission and therefore the petitioner should not be saddled with the liability of delay payment charges for the period between 16.8.1993 to 30th August 1996 during which the stay order of the Commission was in operation. Some what a similar question came to be considered by the Hon'ble Supreme Court in the case of ***M/s. Shree Chamundi Mopeds Ltd. Vs. Church of South India Trust Association, Madras,*** [supra], and the Hon'ble Supreme Court held that, “while

considering the effect of an interim order staying the operation of the order under challenge, a distinction has to be made between quashing of an order and stay of operation of an order. Quashing of an order results in the restoration of the position as it stood on the date of the passing of the order which has been quashed. The stay of operation of an order does not, however, lead to such a result. It only means that the order which has been stayed would not be operative from the date of the passing of the stay order and it does not mean that the said order has been wiped out from existence." The moment the stay order is vacated, all the consequences, as if there was no stay order, must follow. Therefore, merely because the petitioner was prosecuting the litigation before the Commission and obtained the stay order, the petitioner is not given a leverage to not to pay the delay payment charges, which is a statutory liability. As per the Conditions of Supply, after 10 days of issuance of the Bill if the amount is not paid the liability to pay delay payment charges will arise automatically and therefore the

prayer of the petitioner not to recover the delay payment charges, for the period between 16.8.1993 and 30th August 1996 during which the stay order of the Commission was in operation, cannot be granted. There is no illegality committed by the G.E.B. In fastening the liability of delay payment charges for the aforesaid period. On the contrary,the GEB is

recovering the amount as per the statutory provisions and the Conditions of Supply.

6.1. So far as the request of the petitioners to direct the GEB to recover interest on delay payment charges at 6% also cannot be granted. First of all, there is no reference to charging 6% interest in the order passed by the learned Single Judge in aforesaid Special Civil Application while disposing of the aforesaid petition and relegating the petitioners to submit a representation. Even otherwise, as stated above, so far as H.T. connection is concerned, delay payment charge is required to be recovered at 30% after issuance of the bill if the amount is not paid.

Issuance of a direction on the respondent to recover delay payment charges at 6% would be contrary to the Statute and the Conditions of Supply and therefore such a direction cannot be issued.

7. For the reasons stated above, there is no substance in the aforesaid Special Civil Application and the same is dismissed. Rule is discharged. Ad-

interim relief stands vacated forthwith. There will be no order as to costs.

[M.R. Shah, J.]

RMR.